

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL ALVARADO

v.

GERALD L. ROZUM, ET AL.

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CIVIL ACTION

NO. 07-3069

FILED

FEB 07 2008

ORDER

MICHAEL J. ... Clerk
By MS Dep. Clerk

AND NOW, this 7th day of February, 2008, upon careful and independent consideration of the Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. No. 1), and after review of United States Magistrate Judge Henry S. Perkin's Report and Recommendation (Doc. No. 7), and consideration of Petitioner's Objections to the Magistrate Judge's Report and Recommendation (Doc. No. 10), **IT IS HEREBY ORDERED** that:

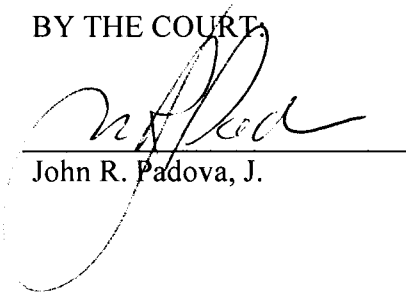
1. Petitioner's Objections are **OVERRULED**;
2. The Report and Recommendation of Magistrate Judge Perkins is **APPROVED** and **ADOPTED**;¹
3. The Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 is **DENIED**;
4. Because Petitioner has failed to demonstrate that reasonable jurists could disagree with

¹Petitioner argues that the Magistrate Judge erred in recommending denial of the Petition or, in the alternative, failing to issue a Certificate of Appealability because, in his view, his underlying claims of trial counsel ineffectiveness are meritorious. However, the Magistrate Judge recommended denying the Petition as time-barred, without reaching the merits of Petitioner's claims, and Petitioner does not identify any error in the Magistrate Judge's analysis of the timeliness issues. Moreover, when a court denies a habeas petition on procedural grounds, a certificate of appealability should issue only if the petitioner shows that jurists of reason would find it debatable both whether the petition states a valid claim for the denial of a constitutional right and whether the district court was correct in its procedural ruling. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). In this case, Petitioner has provided us with no basis on which to conclude that his Petition is not time-barred, and we adopt the Magistrate Judge's contrary recommendation in that regard. Thus, Petitioner's Objections are overruled.

our dismissal of this claim on procedural grounds, we decline to issue a certificate of appealability under 28 U.S.C. § 2253(c)(2); and

5. The Clerk shall **CLOSE** this case statistically.

BY THE COURT.



John R. Padova, J.